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Mutual agreement procedure introduced and changes made to tax treatment of M&A transactions

Changes to Greece's Tax Procedures Code and Income Tax Law were adopted by parliament on 24 November 2016 and published in the official gazette on 28 November (L. 4438/2016).

The most significant measures are the introduction of a mutual agreement procedure (MAP) into domestic law and changes to the tax treatment of merger and acquisition (M&A) transactions. The MAP rules apply as from the date of publication and the M&A rules on new exemptions apply to transactions taking place after the date of publication.

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Mutual agreement procedure (MAP)

A MAP article is introduced as new article 63A of the Tax Procedures Code, and is in line with the Double Tax Treaties concluded by Greece and the EU arbitration convention (90/436/EC).

- The MAP can be invoked to resolve issues arising in the context of an applicable tax treaty.

- The Greek tax authorities will have the power to conduct the MAP with the relevant foreign tax authorities, and the results of a MAP will be effective upon issuance of a mutual agreement decision.

- The taxpayer will be notified of the results of a MAP, which it will need to accept within a 60-day period.

- If the taxpayer accepts the results, a mutual agreement decision will be issued. This decision is not subject to appeal, nor may the taxpayer resort to any other legal remedy.

- The General Secretary of Public Revenue is expected to issue a regulatory decision that sets out the specific procedure for invoking the MAP, as well as other details regarding the application of the provision.

Measures on M&As

According to the new provisions, the Greek tax authorities can impose additional conditions for the application of the provisions on an exchange of shares (article 53) and mergers and demergers (article 54) of the Income Tax Code.

The previously applicable regime on transformations under L. 4172/2013 provided only for an income tax exemption, but the scope of the exemption is now expanded to include transfer taxes, stamp duty and other taxes (but not the capital concentration tax).

The new provisions aim at including the benefits granted under other regimes for company transformations in L. 4172/2013.

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